

IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.D-5222 of 2014
[Lyari Development Authority v. M/s. SANE Insurance Worker Cooperative Housing Society Ltd.]

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Osman Ali Hadi

- 1.For hg of CMA No.29225/14
- 2.For hg of main case

11.09.2025.

M/s. Nadir Khan Burdi and Munawar Ali, advocates for petitioner.
Mr. Kafeel Ahmed Abbasi, Additional Advocate General, Sindh.

J U D G M E N T

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MUHAMMAD IQBAL KALHORO J: Petitioner is a Development Authority. Respondent No. 1, a Housing Society, applied to it for issuance of a layout plan. On examination, the title of respondent No. 1 was found bogus; hence, the request was declined and a publication was made in the newspapers alarming the public at large from purchasing the plots in the society. Against such an act of petitioner, respondent No. 1 filed a complaint with Provincial Ombudsman. He entertained the same and passed an order against the petitioner depreciating its act of making publication against respondent No. 1 vide order dated 17.09.2007.

2. The petitioner then filed an appeal against the order before Governor/respondent No. 2 in terms of Section 32 of Establishment of the Office of Ombudsman for the Province of Sindh Act, 1991 within thirty (30) days, the period for filing the appeal. However, the appeal was dismissed and such intimation was communicated to petitioner through a letter dated 19.11.2013 stating that appeal was time barred. This communication was made to the petitioner without affording it an opportunity of hearing or giving it a chance to explain the question as to whether the appeal was time barred or not.

3. Against such order, the petitioner filed a review application but it was dismissed on the ground that under the aforesaid Act, the Governor had no jurisdiction to entertain a review application.

4. The case of the petitioner is that the appeal was not time barred, the petitioner was not given an opportunity to explain the position; hence, dismissal of the appeal on the ground of being time barred is factually incorrect. Insofar as dismissal of review application is concerned, his argument is that under section 21 of the General Clauses Act, the Governor had the power to entertain the same application, particularly, when there was a substantial question of fact involved which was wrongly determined.

5. Learned AAG, however, has opposed the petition on the ground that no application for condonation of delay was filed by the petitioner before the Governor.

6. Nonetheless, we are of a view that the claim of petitioner that the appeal was not time barred needed a determination and a proper hearing. The question of filing an application for condonation of delay would arise only when the appeal was patently time barred and *prima facie* in the entire appeal the delay was not explained. But, contrary to it, when the claim of the petitioner is that it was filed within time, an opportunity of hearing ought to have been awarded to it to explain the position before dismissing the appeal being time barred. The procedure adopted by respondent No. 2 i.e. dismissing the appeal without affording an opportunity of hearing to the petitioner and without referring to the relevant provisions and the dates to justify the same conclusion has resulted apparently into miscarriage of justice. Therefore, we set aside both the orders passed on the review application and on appeal and remand the matter to the Governor/respondent No.2 to give a chance of

hearing to the petitioner and pass an speaking order, if he is still of the view that the appeal is time barred by referring to the relevant provision of law and the material dates in this connection.

The petitions is accordingly disposed of in above terms along with pending application.

JUDGE

JUDGE

HANIF